IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1252 OF 2005

Harshad Rais Ahmed Shaikh ...Petitioner

vs.

The State of Maharashtra & Ors. ...Respondents

Mr.Ganesh Gole for the Petitioner
Mr.A.S.Gadkari,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 8,2005.

P.C.:

1. Rule. The learned A.P.P. waive service for the Respondents. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The challenge in this Petition under Article 227 of Constitution of India is to the order of externment passed by the Respondent No.3 under Section 56 (1) (a) (b) of the Bombay Police Act, 1951 (hereinafter referred to as the said Act of 1951) and the confirmation thereof by the Respondent No.4 in the statutory Appeal preferred by the Petitioner.

3. The contention of the learned Counsel for the Petitioner is that show cause notice issued by the Respondent No.2 dated 15th September 2004 is on the basis of three offences described therein and incamera statements of two witnesses. While passing the order on the basis of said show cause notice, the Respondent No.3 has placed reliance on one more

offence registered at Mahatma Phule Police Station, Kalyan which is not even referred to in the show cause notice. He submitted that the Applicant had no opportunity to show cause in so far as reliance placed by the Respondent No.3 on the said additional offence is concerned. He placed reliance on the decision of this Court reported in 2002 All M.R. (Cri) page No.419 (Saratullah Mohammed Mukim Khan Vs. Sudesh K. Padvi & others) and submitted that the order of externment passed on the material extraneous to the show cause notice is liable to be quashed.

4. The learned A.P.P. pointed out that the said fourth offence relied upon by the Respondent No.3 is registered on the basis of the incident which has taken place after the issuance of show cause notice dated 15th September 2004 and that is the reason why the said offence is not referred to in the show cause notice. He therefore submitted that there is no infirmity in the impugned Order.

5. The very object of issuing show cause notice is to give an opportunity to the person concerned to deal with the material proposed to be relied upon by the Authorities for passing the order of externment. If the order of externment is based on registration of one offence and if the said offence is not referred to in the show cause notice, it is obvious that while passing the order of externment reliance is placed by the Respondent No.3 on the material which is extraneous to the

show cause notice.

6. On this ground alone, the impugned order of externment is unsustainable and deserves to be quashed and set aside.

7. Hence, I pass the following order :

i) Rule is made absolute in terms of prayer clause (a). No order as to costs.

ii) It is made clear that it will be open for the Authorities to take action against the Petitioner in accordance with law notwithstanding this Order.

. Parties to act upon an authenticated copy of this order.

JUDGE

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